European Master in Law and Economics
University of Hamburg, Faculty of Law

Course: Economic Analysis of Property Law
Prof. Dr. Thomas Eger
Second Term (2017)

Working Materials:
A. A. Alchian: „Some Economics of Property Rights“
H. de Soto: „The Mystery of Capital. Why Capitalism Triumphs in the West and Fails Everywhere Else“, chapter 2
A. Bouckaert/B. Depoorter: „Adverse Possession – Title Systems“
S. Levmore: „Variety and Uniformity in the Treatment of the Good-Faith Purchaser“
H. Demsetz: „Toward a Theory of Property Rights“
J. Buchanan/ J. Y. Yoon: „Symmetric Tragedies: Commons and Anticommons“
EMLE 2nd Term (2017)

The Law and Economics of Corporate Law

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Haim Striks School of Law, College of Management, Israel

Summary
This is an advanced EMLE course. As a 2nd term course it seeks to enable students to understand the state to the art discussions in law & economics. The course aims to enhance the understanding of the interaction between markets, contracts, corporations and capital markets.

The course thus tackles questions such as the reason for the incorporation of firms, their optimal size, the reasons for some of the core structural elements of corporate law, what is corporate governance, what are gatekeepers and why they sometimes fail, etc.

The course may include a screening of a documentary film and the last class may be devoted in part to a training session in view of the final exam.

Reading List

Note: Obligatory texts are marked with an asterisk.

Basic Background Texts

Topic I: Why Incorporate?
2. Coase, 4 Economica 386 (1937) –
4. Williamson, 22 J. L. Econ. 233 (1979)
Topic II: The Characteristics of the Firm
1. (*) Anatomy, 1-34.

Topic III: Corporate Governance
1. (*) Anatomy, 35-87 (focus on 35-50, 55-78)
2. (*) Cheffins, The History of Corporate Governance (2012), SSRN.

Topic IV: Ownership, Control & Global Trends
1. (*) Anatomy, 225-238, 267-273

Topic V: Gatekeepers
Case Law:
   b. ECJ C-550/07 Akzo Nobel Chemicals and Akcros Chemicals v Commission [2010]
3. Mauro Bussani "Credit Rating Agencies’ Accountability: Short Notes on a Global Issue", Global Jurist, Vol. 10: Iss. 1, Article 1, Available at: http://www.bepress.com/gj/vol10/iss1/art1

Additional Bibliography
3) Rafael La Porta, Lopez-de-Silanes and Andrei Shleifer, "Corporate Ownership around the World", 54 J. Fin. 471 (1999).


Public Law & Economics II: Constitutional Economics

Prof. Dr. Stefan Voigt
Institute of Law & Economics, University of Hamburg
Contents – Overview:

I Prolegomena

1. Research program
2. Why *economic* theory of constitutions?
3. Democratic – Autocratic: does it matter?
II The Constitution as Explanans

4. Economic Effects of Electoral Rules
5. Economic Effects of Form of Government (Presidential vs. Parliamentary Systems)
6. Economic Effects of Federalism / Decentralization
7. Economic Effects of Direct Democracy
8. Economic Effects Basic Rights
9. When are Constitutions likely to be enforced?
III The Constitution as Explanandum
10. Why – and when – do Countries Change their Form of Government?
11. Getting Started: The Constitutional Assembly

IV Normative Theories
12. John Rawls
13. James Buchanan
References

Required reading marked “*”

A good overview over the **prolegomena** is:

And a good overview over the rest is:

One of the **foundations** of Positive Constitutional Economics is:

The possible functions of constitutions in **autocratic regimes** are nicely discussed in
An important contribution to **Positive Constitutional Economy** is:


For the chapters on **electoral rules** and **forms of government**:


And


The Economic Effects of **Human Rights** are analyzed in:


The following two papers deal with the economic consequences of **federalism**:


This is the first paper that assesses the economic consequences of direct democracy on a cross-country basis:


And here is an excellent „3rd generation“ paper:


A „gap“ in the implementation of constitutional text is discussed by


A fantastic paper on whether the way in which constitutions are produced really matters is


One of the few papers trying to endogenize constitutional rules is this:


Two “classics” from Rawls and Buchanan are:

Welcome to “Contract Law and Economics”!

The goal of the course is two-fold:

1) We will carry out an incentive based analysis of classical contract law matters taking the rationality assumption as a starting point (remedies, breach, warranties, disclosure duties etc.). In doing so we will explore the costs and benefits of different legal regimes.

2) We will discuss by way of looking at experimental literature when the rationality of contracting parties is impeded and consider the consequences of these findings.

Having established the relevance of behavioural insights for contract law, we will conclude by discussing how (and if) such insights can be introduced to and considered in law- and policy-making – an as of now unresolved challenge!

Reading materials will be uploaded before class. Slides will be made available after class.

Come prepared!
Lecture 1: “Introduction to contracts and experiments”

Reading material:

✓ Schäfer/Ott (2004), The economic analysis of Civil Law, 273-278
✓ Cartwright (2014), Behavioural Economics, 2nd edition, 19-26

Familiarize yourself with the basic concepts of contract law. You can look at your own country’s law or consider one of the optional readings that have been uploaded:

✓ Zweigert/Kötz in a comparative perspective 356 – 365 (Option 1)
✓ Zumbansen on German contract law 188-199 (Option 2)

Lecture 2: “Paternalism vs. autonomy in contract law”

* during this class the groups for the presentations in lecture 5/6 will be formed

Reading material:

✓ Tannenbaum et al (2015), On the misplaced politics of behavioral policy interventions, Study 1 and 2

Optional:
✓ Arad/Rubinstein (2015), The People’s Perspective on Libertarian- Paternalistic Policies, study 2

Lecture 3: “Mandatory and default rules”

Reading material:

✓ Schäfer/Ott (2004), 278-281
✓ Cooter/Ulen (2011), 292-295
✓ Ayres (2012), 2034-7, 2068-84

Optional:
✓ Mackaay (2011) ‘Good faith in civil law systems’
✓ Listokin (2010), The Meaning of Contractual Silence: A Field Experiment, 2 J. Legal Analysis 399
✓ Arad/Rubinstein (2015), The People’s Perspective on Libertarian- Paternalistic Policies, study 1
Lecture 4: “Efficient Breach”

Reading material:

- Bigoni et al (2014), Unbundling Efficient Breach
  * you can skip section 2
  * we will save the discussion of section 5 for later when we will learn more about specific performance, but do already prepare it!

Optional:
- Ogus on efficient breach
- Mackaay on efficient breach

Lecture 5: “Specific performance vs. expectation damages”

&

Lecture 6: “Unbundling the effects of different types of damages”

*”your time to shine”*

Reading material:

- Cooter/Ulen (2011) 325-331

Optional:
- Schweizer (2015), Efficient Incentives from Obligation Law and the Compensation Principle
- Schäfer/Ott (2004), 320-335

Lecture 7: “Consumer contracts & behavioural insights”

Reading material:

- Schäfer/Ott 370-374 (standard contract terms)
- Schäfer/Ott, 336-343; 351-353 (warranties)
- Rekaiti and Van den Bergh 2000, 373-384 (withdrawal)

Optional:
✓ Werth (2011), Contract Law and Economics, Encyclopedia, 256-277

Lecture 8 “Long term contracts & behavioural insights”

Reading material:
✓ Gilson (2003), Engineering a venture capital market: Lessons from the American Experience, focus on 1076-1092

Optional:
✓ C/U 299-305 (long run)

Lecture 9: “Exploring the marketing side”

Reading material:
✓ Hoffman (forthcoming), From Promise to Form: how contracting online changes consumers, 37-41.

Optional:

Lecture 10: “Harmonization of contract law & the role of behavioural economics”

Reading material:
✓ Van den Bergh (2002), Towards a European Private Law – to harmonize or not to harmonize, that is the question, 327-343